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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,615	11/29/2001	Kenneth B. Albritton	P56341	2308

7590 07/21/2004  
Robert E. Bushnell  
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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/995,615	Applicant(s) ALBRITTON, KENNETH B.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on \_\_\_\_.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 24-27,32,34,35 and 37-45 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_ is/are allowed.
- 6)  Claim(s) 24-27,32,34,35 and 37-45 is/are rejected.
- 7)  Claim(s) \_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. The amendment filed 04/26/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the changing from “bag” to “backpack”. This would change the specificity of the specification. Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 112***

2. Claims 39, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 39, “said front side” has no antecedent basis.

The bottom portion and the back wall are defined as separate structures in claim 38. The recitation with respect to the back wall is folded upon itself is inconsistent.

#### ***Claim Rejections - 35 USC § 102/103***

3. Claims 35, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Fournier. Fournier teaches a back wall 2, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 2 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. The term backpack does not impart any structure over the bag in Fournier. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

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4. Claims 35, 37, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by DeChant (6039474). DeChant teaches a back wall, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 100 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

5. Claims 39, 40, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Tong (63334519). Tong teaches a backside member, a bottom member and straps. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

6. Claims 24, 25, 26, 27, 32, 41, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (63334519) in view of either Fournier or DeChant. Tong teaches a hook unit 13, back wall, left and right walls 12, a bottom portion 16 attached to a bottom of the back wall 1, a plurality of compartments on a front surface of the back wall, and at least one strap as claimed.

Tong meets all claimed limitations except for the netted compartments. Either Fournier or DeChant teaches that it is known in the art to provide netted compartments. It would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier or DeChant to provide venting for the contents. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

Regarding claim 45, a physical measurement in Fig. 4 indicates that the length of wall 12 is slightly longer than the width of the back wall. Furthermore, it would have been obvious to

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one of ordinary skill in the art to provide a length of the first and second sidewall being greater than the width of the back wall to provide the desired dimension for the bag.

7. Claims 24-27, 32, 35, 37, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589). Franklin teaches a luggage having a foldable back wall with mesh compartments as shown in Fig. 14, and hook 152 that can be attached to an external object, and a front portion as shown in Fig. 14. Franklin meets all claimed limitations except for the straps. Wulf teaches that it is known in the art to provide back straps. It would have been obvious to one of ordinary skill in the art to provide back straps in Franklin as taught by Wulf to handle the luggage easily.

Bomes teaches that it is known in the art to provide mesh compartments 60. It would have been obvious to one of ordinary skill in the art to provide mesh compartments in Franklin as taught by Bomes to provide the desired venting.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection in paragraph 6, in view of Davis et al. (2626689). Davis teaches that it is known in the art to provide strap 52. It would have been obvious to one of ordinary skill in the art to provide straps in either Fournier or Tong as taught by Davis to provide a place for hanging garments.

9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above in paragraph 6 or Franklin rejection as set forth in paragraph 7, and further in view of Briggs et al. (4901897). Briggs teaches that it is known in the art to provide straps 18. It would have been obvious for one of ordinary skill in the art to provide first and

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second extended portions in either Tong or Franklin as taught by Briggs to keep the contents together.

***Response to Arguments***

10. Applicant's arguments filed 04/26/04 have been fully considered but they are not persuasive. The claims do not read over the prior art of record as set forth above. Applicant's amendment to change from bag to "back pack" does not read over the Tong, Fournier, or DeChant references. It is noted that the original disclosure set forth the invention as a bag. Furthermore, it is noted that Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

With respect to the inventor's declaration that the invention entails commercial success, it is noted that there is no comparison between the invention with the applied reference to compare to. Furthermore, it is noted that the inventor's declaration that the invention entails commercial success is not sufficient to overcome a rejection under 35USC102.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

